

**RE: Rule 2-300
8/27-28/04 Commission Meeting
Open Session Item III.J.
Supplemental Mailing**

-----Original Message-----

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Sent: Tuesday, August 10, 2004 12:02 PM

To: Difuntorum, Randall

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Subject: Rule 2-300

1. With apologies, and in circumstances noted in my e mail a few minutes ago, this is a somewhat cobbled-together report for myself alone, due to Jerry's unavailability.

1. One major difference between 2-300 and ABA 1.17 -- which by the way was added by action of the California delegation, adapted from our 2-300 -- is that ABA allows sale of "an area of law practice" whereas CA does not. On principle this makes sense, as e.g. if a general practice lawyer wants to semi-retire and give up his or her litigation practice to limit the practice to, say, estate planning and such matters. The problem is that no one has apparently defined "area of practice." This was discussed during the '80s and we thought then that a definition would be elusive. For instance, a lawyer lands a big insurance bad faith case, never had one like it, starts it and founders. Can he/she sell that "area of practice" consisting of a single case (or a few cases), cash out up front, and the devil with fee splitting and 2-200? You can see the potential variations, and particularly the possibilities for buying up **cases** instead of meaningful **practice areas**. This subject should be debated: while I support the concept of sale of an area of practice, I believe that there must be controls and haven't found any.

2. Because this subject involves barter in client confidences and also the involvement of non-lawyers (where the seller is deceased) it is necessarily technical and wordy. California has been quite specific in referencing many B&P sections and other related rules; the ABA has -- no doubt unavoidably, since it offers a more generic model -- been more general. I recommend that we retain the specific detail of cross references etc.

3. The ABA model does not refer to the sale of the practices of deceased lawyers except in the discussion. California deals with the subject specifically and in detail (2-300(B)(1)). I think that the mention of deceased lawyers' practices in our present rule is the only extant authority which allows such sale and that its deletion might allow an argument that the right to sell such practices was abandoned, or is not otherwise allowed. Moreover, the detailed material is helpful and should be retained.

4. Also, California has specific reference to practices over which a court has assumed jurisdiction due to incapacity etc. (see 2-300(B)(2)(a) and (b)), and the ABA rule does not, no doubt for the same reasons. Again, and for like reasons, I recommend that we keep what we have.

5. The ABA requires that there be a single buyer or firm; we do not. I think that the ABA's is the better version since it prevents selling off particular cases under the guise of selling practice areas. Although I can think of good arguments in the other direction -- one buyer is interested in probate, another in the franchising practice, etc. -- the ABA's seems like the better idea. Subject to discussion, I recommend it.

6. The ABA rule is much crisper and shorter than ours; and in many ways that is commendable. Ours may be one of the longest in the entire set of California rules. There is no time to parse words or phrases individually in the face of the unfortunate time limitations. We can elaborate on

those matters over future sessions; but I think that the items I have flagged are sufficient to get the discussion started later this month.

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